



**8011-01**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-82422; File No. SR-ICEEU-2017-014]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Clearing Rules and Procedures for Indirect Clearing December 29, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 18, 2017, ICE Clear Europe Limited (“ICE Clear Europe”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change, Security-Based Swap Submission, or Advance Notice

The principal purpose of the proposed rule change is to amend ICE Clear Europe’s Rules, Clearing Procedures and CDS Procedures to implement certain requirements relating to indirect clearing and other matters under applicable European Union regulations.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, Security-Based Swap Submission or Advance Notice

(a) Purpose

The purpose of the proposed changes is to amend the Rules,<sup>3</sup> Clearing Procedures and CDS Procedures to implement certain requirements under the European Union Markets in Financial Instruments Directive ("MiFID II")<sup>4</sup> and Markets in Financial Instruments Regulation ("MiFIR"),<sup>5</sup> and related implementing regulations and technical standards,<sup>6</sup> relating to indirect clearing and certain other matters as discussed herein. The relevant requirements under MiFID II and MiFIR will take effect on January 3, 2018.

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<sup>3</sup> Capitalized terms used but not defined herein have the meanings specified in the Rules.

<sup>4</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

<sup>5</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

<sup>6</sup> Regulation (EU) 2017/2154 of 22 September 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements (the "**MiFIR RTS**") and Commission Delegated Regulation (EU) No 149/2013, together with the amendments set out in Regulation (EU) 2017/2155 of 22 September 2017

### *Indirect Clearing*

The European Market Infrastructure Regulation (“EMIR”)<sup>7</sup> and technical standards thereunder<sup>8</sup> impose certain standards for indirect clearing arrangements for OTC derivatives clearing. MiFID II and MiFIR, and the related implementing regulations, extend this concept to exchange-traded derivatives, and relevant EMIR technical standards are being simultaneously recast for consistency. In general, “indirect clearing” for this purpose refers to arrangements in which an entity that is itself a customer of a clearing member in turn is clearing for one or more of its own customers (“indirect clients”), as well as longer chains involving additional intermediaries.<sup>9</sup> The new technical standards under EMIR, MiFIR and MiFID II<sup>10</sup> have the objective that indirect clearing arrangements do not increase counterparty risk and that the assets and positions of the indirect client benefit from protections equivalent to those provided under EMIR for direct clients of a clearing member.<sup>11</sup>

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amending Delegated Regulation (EU) No 149/2013 with regard to regulatory technical standards on indirect clearing arrangements (the “**EMIR RTS**”).

<sup>7</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

<sup>8</sup> Commission Delegated Regulation (EU) No 149/2013.

<sup>9</sup> Specifically, indirect clearing arrangements are defined under both the EMIR and MiFIR RTS as “the set of contractual relationships between providers and recipients of indirect clearing services provided by a client, an indirect client or a second indirect client.” Article 1(a) of MiFIR RTS; Article 1(1) of EMIR RTS.

<sup>10</sup> For ease of reference, we refer to the relevant requirements of MiFID II, MiFIR, EMIR and technical standards thereunder discussed herein as “MiFID II” or “MiFID II requirements”.

<sup>11</sup> MiFIR Article 30.

The new MiFID II requirements impose segregation obligations on direct clients that provide indirect clearing, as well as on clearing organizations and clearing members directly. Clearing members are required to open and maintain specific types of separate accounts (referred to as standard omnibus indirect accounts and gross omnibus indirect accounts), at clearing member level, for assets and positions held by their direct clients on behalf of indirect clients.<sup>12</sup> (Standard omnibus indirect accounts are to be used to hold assets and positions of indirect clients on an omnibus basis, distinct from the accounts used for proprietary positions of the direct client. Gross omnibus indirect accounts provide a further level of segregation that enables the client (and clearing member) to distinguish the assets and positions of each indirect client.) CCPs in turn are required to open and maintain corresponding new forms of customer accounts for their clearing members, which are to be used to hold assets and positions of indirect clients of direct customers of the clearing member in standard omnibus indirect accounts and gross omnibus indirect accounts, respectively.<sup>13</sup>

The amendments to the Rules and Clearing Procedures are designed to implement these new account type requirements at CCP level, while making certain allowances for FCM/BD Clearing Members in light of particular requirements of U.S. law, as discussed herein.

In Rule 101, new definitions for a series of customer account categories relating to indirect clients accessing the clearing house through Non-FCM/BD Clearing Members have been added: “Standard Omnibus Indirect Account for F&O,” “Standard TTFC

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<sup>12</sup> MiFIR RTS Article 4(2).

<sup>13</sup> MiFIR RTS Article 4(4).

Omnibus Indirect Account for F&O,” “Standard Omnibus Indirect Account for CDS,” “Standard TTFCFA Omnibus Indirect Account for CDS,” “Standard Omnibus Account for FX,” “Standard TTFCFA Omnibus Indirect Account for FX,” and “Segregated Gross Indirect Account” (collectively referred to herein as “indirect clearing accounts”).

Appropriate references to these new account categories have been added throughout the definitions, including in the definitions of “Customer Account Category”, “Customer-CM CDs Transaction”, “Customer-CM F&O Transaction” and “Customer-CM FX Transaction”. A new definition of “Indirect Client” has been added, consistent with the regulatory definition. Conforming changes are also made in the definition of Margin-flow Co-mingled Account and Nominated Customer Bank Account to clarify that equivalent procedures apply. A reference to MiFID I, which is to be repealed effective January 2018, has been removed from the definitions, and in various other provisions of the Rules.

In Rules 102(f) and (q), conforming and clarifying changes are made to reflect the various customer account classes that may apply, in light of the additional indirect clearing accounts. Rule 102(g) is amended to require that Clearing Members, consistent with the MiFID II requirements, offer their Affected Customers with indirect clients the choice of a gross omnibus indirect account or a standard omnibus indirect account. The definition of “Affected Customer” in Rule 101 has been amended to address indirect clearing situations as well as direct clearing. As a result of this definition, Rule 102(g) does not impose an obligation to make the new indirect clearing accounts available in situations where applicable law in the relevant jurisdiction prevents or prohibits such

accounts from being offered. As discussed in more detail below, such limitations may, for example, apply to FCM/BD Clearing Members under applicable U.S. law.

In Rule 202(a)(xxi), the obligation of Clearing Members to provide certain information to ICE Clear Europe with respect to segregated customer accounts is amended to include the new indirect client accounts. Similarly, Rule 203(a)(xx), which limits use of title transfer accounts where the clearing member is subject to UK CASS segregation rules, is amended to cover the new title transfer account categories for indirect clients. Conforming changes are also made to Rule 207(d) to specify the customer account categories for Non-FCM/BD Clearing Members.

The amendments to Rule 302(a) incorporate the payment mechanics relating to segregated gross indirect accounts, in a manner similar to the approach used for Margin-flow Co-mingled Accounts. New paragraphs 302(a)(vii) and (viii) address payment of amounts owed by and to the clearing member in respect of segregated gross indirect accounts, respectively. Conforming and clarifying changes are made in other paragraphs of Rule 302.

Rule 401(o) is being amended to reflect the additional capacities through which a clearing member may enter into a contract for a customer account where the customer is providing indirect clearing services. The amendment distinguishes scenarios where the customer is acting for its own account from those where it is acting for the account of indirect clients. New subparagraphs (xiii)-(xviii) address the use of the indirect clearing accounts in various categories by Non-FCM/BD Clearing Members acting for customers that in turn are acting for one or more indirect clients. In such cases, the clearing member must designate whether the contract is for: (A) a segregated gross indirect account, if the

customer has communicated to the clearing member that the indirect client has elected to use such an account; or (B) otherwise, the appropriate type of standard omnibus indirect account for F&O, CDS or FX. In either case the contract will be recorded by ICE Clear Europe in accordance with such designation.

Rule 503(k) has been amended to address transfer of Permitted Cover in respect of segregated gross indirect accounts, in a manner similar to the current treatment of Margin-flow Co-mingled Accounts. The amendments in particular address certain reporting required to be provided by the clearing member to the clearing house with respect to such Permitted Cover. Rule 504(c), which provides certain representations by clearing members concerning Permitted Cover they transfer to the clearing house, is amended in paragraph (v) to add a representation concerning compliance with obligations under MiFID II and other applicable laws to third parties (including with respect to receipt of assets from clients) and in paragraph (vi) to add references to the relevant classes of indirect client account.

Various changes have been made to Rule 904 to address default management involving indirect client accounts. Rule 904(m), which addresses the transfer process for certain classes of customer account, has been clarified to exclude segregated gross indirect accounts, which are covered in new Rule 904(w), discussed below. Rule 904(v) is being added to set out principles that will apply when ICEU is calculating the net sums on segregated gross indirect accounts of a defaulting clearing member or determining the amounts available to be transferred to a transferee clearing member in respect of such an account, in a manner similar to the calculation of net sums for Margin-flow Co-mingled Accounts. Rule 904(w) is being added to require that upon an event of default being

declared in respect of a clearing member, ICEU commits to triggering the procedures for the transfer process for both margin and open contract positions recorded in segregated gross indirect accounts, subject to specified conditions similar those for other account categories.

Rule 906(b), which provides that net sums will be determined separately in respect of each class of customer account, has been amended to reference the new classes of indirect client accounts, and to make certain other conforming changes. Pursuant to new Rule 907(n), ICEU will, if requested by a non-defaulting clearing member, transfer any contracts, margin or other permitted assets from a standard omnibus indirect account or segregated gross indirect account of that clearing member to a different standard omnibus indirect account or segregated gross indirect account of the same clearing member or will otherwise update the records relating to such an account to facilitate the management by the clearing member of the default of the customer or an indirect client.

References to relevant indirect clearing accounts have been added in Rule 1516(a), which imposes certain requirements on clearing members for customer accounts for CDS Contracts.

The CDS Standard Terms, the F&O Standard Terms and the FX Standard Terms have each been amended in a new paragraph 3(p), 3(q) and 3(p), respectively, to provide that each customer or indirect client that has chosen individual segregation through usage of a margin-flow co-mingled account or segregated gross indirect account authorizes the clearing member to determine how the different classes of permitted assets should be transferred to ICEU in respect of the relevant account, for purposes of revised Rule



503(k) as discussed above. In addition, conforming references to the new indirect client accounts have been added.

The Clearing Procedures are also being amended to incorporate the new account categories, including a separate set of changes to address FCM/BD Clearing Members. As noted above, revised Rule 102(g) does not require clearing members to offer the new indirect client accounts where doing so would be inconsistent with relevant applicable law. In the case of FCM/BD Clearing Members, under the U.S. Commodity Exchange Act<sup>14</sup> and U.S. Bankruptcy Code,<sup>15</sup> segregation for customer account positions and assets is established on an omnibus basis by account class (U.S. futures, swaps, or non-U.S. futures) without distinguishing between clients and indirect clients (and without distinguishing among indirect clients). As a result, in the event of an FCM failure, all customers in the same account class (whether direct or indirect) share in the same pool of customer property for that account class. Because of this limitation on the ability to provide individual account segregation for indirect clients of customers of an FCM/BD Clearing Member, ICE Clear Europe is offering only a segregated form of position-keeping for indirect clients for such clearing members. Specifically, ICE Clear Europe will offer standard omnibus indirect accounts for FCM/BD Clearing Members that will be made available as position-keeping subaccounts of the existing customer accounts. Three such position-keeping subaccounts will be created, one linked to each of the FCM/BD

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<sup>14</sup> 7 U.S.C. 1 et seq.

<sup>15</sup> Title 11, United States Code.

Customer Accounts that use a gross margin model: the DCM Customer Account, the Swap Customer Account, and the Non-DCM/Swap Customer Account.<sup>16</sup>

Each such subaccount can be used by FCM/BD Clearing Members to record positions of indirect clients of customers separately from positions of direct customers, and thus facilitate segregation of indirect clients from direct clients in the event of a client default and related record-keeping, consistent with certain of the MiFID II requirements as regards indirect clearing. In the event of a clearing member default, however, ICE Clear Europe would manage the default, as under the current Rules, separately for each customer account class, including any indirect client subaccount within such class, consistent with the requirements of the Commodity Exchange Act and U.S. Bankruptcy Code as discussed above.<sup>17</sup>

Paragraph 2.3(3) of the Clearing Procedures is being amended to add the specific position-keeping subaccounts linked to the customer accounts for FCM/BD clearing members. In addition, Paragraphs 2.3(4) and 2.3(5) of the Clearing Procedures add the relevant position-keeping accounts for the new indirect client accounts for Non-FCM/BD Clearing Members. Conforming changes are added in paragraph 3.1 to reflect the corresponding margin accounts for the indirect client account categories. Conforming

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<sup>16</sup> Notwithstanding this change, the Swap Customer Account is not currently available for use by FCM/BD Clearing Members for customer positions in CDS Contracts (including CDS Contracts that are security-based swaps).

<sup>17</sup> Only a single type of indirect client subaccount per account class is being made available for FCM/BD Clearing Members. In light of the segregation requirements under applicable U.S. law, and the corresponding limitation on the ability to offer individual account segregation, ICE Clear Europe does not believe that offering additional subaccounts based on the gross omnibus indirect account model would provide additional benefits for indirect clients.

changes are made to the table of account categories following paragraph 3.2 of the Clearing Procedures.

### *Emission Allowances*

Various Rule changes are proposed to address the consequence of emission allowances becoming a new class of “financial instrument” under MiFID II.<sup>18</sup> This includes new definitions for “Emission Allowance” and “Emissions Registry” in Rule 101, as well as conforming changes to the definition of “Delivery Facility.” Various amendments have also been made to Part 12 of the Rules to address settlement finality with respect to transactions in Emission Allowances, which as a result of this designation become in-scope as transfer orders for purposes of the EU Settlement Finality Directive<sup>19</sup> and UK Settlement Finality Regulations<sup>20</sup>. Rule 1202 has been amended to introduce the concept of delivery orders for Emission Allowances for purposes of the application of Settlement Finality Regulations. Rule 1203(j) has been added to address the timing as of which Emission Allowance Delivery Orders become irrevocable. Rule 1204(i) has been

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<sup>18</sup> MIFID II, Annex 1, Section C(11).

<sup>19</sup> Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems.

<sup>20</sup> Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (SI 1999/2979). See also the UK Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (SI 2017/701), which amends the definition of “securities” (used in the context of a “securities transfer order”) in the Settlement Finality Regulations to refer to the definition of “securities” under MiFID II (Regulation 50(4), Schedule 5, paragraph 2(b)).

added to address cancellation of such Delivery Orders prior to becoming irrevocable. Rule 1205(g) addresses satisfaction of such Delivery Orders. Certain other clarifying and conforming changes are made in Rules 1202(a)(iii), 1203(i) and 1204(a) and 1204(d).

### *Straight-Through Processing*

MiFID II introduces new straight-through processing requirements for cleared transactions. To comply with these requirements, the CDS Procedures have been amended to implement certain requirements under MiFID II relating to the timing of submission of transactions for clearing. Specifically, Section 4.4(a) has been amended to clarify the clearing house's obligation to give notice of the acceptance or rejection of a submitted CDS transaction on a real-time basis for purposes of MiFID II. The amendments also address the submission of certain bilaterally executed transactions, in light of the trade execution requirements of MiFID II, and require that clearing members only submit CDS trade particulars in relation to bilateral CDS transactions if, at the time such transactions were entered into, it was not agreed that the transaction would be submitted for clearing. Certain other clarifications to the bilateral submission process are also made. Paragraphs 4.17 and 4.18 have been amended to revise the timeframes under which ICEU will accept or reject CDS trade particulars submitted for clearing, depending on the manner of execution or facility through which the transaction was executed, consistent with the requirements of MiFID II. The amendments supplement the existing provisions in the Clearing Procedures that implement applicable US law requirements as

to the timing of submission of clearing and transaction processing,<sup>21</sup> such that ICE Clear Europe will be in compliance with both US and EU requirements in this regard.

#### *Market Maker Amendments*

The Clearing Procedures have also been amended as a consequence of proposed revisions to the ICE Futures Europe Rules in light of the MiFID II market making scheme requirements. Under the proposed amendments, ICE Futures Europe's existing "Market Maker Programs" have been renamed as "Liquidity Provider Programs" to distinguish the existing incentive scheme under the ICE Futures Europe Rules from the market maker scheme regulated under MiFID II in relation to certain types of financial instruments. As a result of this change, the Clearing Procedures are being amended to rename the relevant position keeping account as "Liquidity Provider" rather than "Market Maker," specifically in Paragraph 2.3(b)(vii) and the related summary table following Paragraph 3.2(a).

#### (b) Statutory Basis

ICE Clear Europe believes that the proposed amendments are consistent with the requirements of Section 17A of the Act<sup>22</sup> and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.<sup>23</sup> In particular, Section 17A(b)(3)(F) of the Act<sup>24</sup> requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and,

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<sup>21</sup> See, e.g., 17 C.F.R. 39.12(b)(7).

<sup>22</sup> 15 U.S.C. 78q-1.

<sup>23</sup> 17 C.F.R. 240.17Ad-22.

<sup>24</sup> 15 U.S.C. 78q-1(b)(3)(F).

to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest.

The proposed amendments are intended to address specific requirements in MiFID II relating to indirect clearing, as well as certain other MiFID II requirements and implications. In general, the amendments adopt new account classes mandated by these European regulations to facilitate protection of positions and margin provided by indirect clients of customers of clearing members. Through the new account classes, which generally mirror other account classes available to Non-FCM/BD Clearing Members, the amendments will enable clearing members to separate such positions and margin of indirect clients from other positions and margin of direct customers. This in turn is intended to support enhanced protections for indirect clients in the event of a default of the customer of the clearing member, consistent with the goals of MiFID II. The amendments also adopt a separate set of additional position-keeping accounts for indirect clients of customers of FCM/BD Clearing Members, which are designed to facilitate tracking of positions of such clients by clearing members while taking into the account the particular requirements of the segregation regime for FCM/BD Clearing Members under the Commodity Exchange Act and U.S. Bankruptcy Code. In ICE Clear Europe's view, the amendments are thus designed to promote the prompt and accurate clearance and settlement of derivative transactions, and promote the protection of customers and indirect clients and the public interest, in a manner consistent with Section 17A(b)(3)(F). Although, as noted above, the amendments treat FCM/BD Clearing Members and Non-FCM/BD Clearing Members differently in terms of the availability of indirect clearing

accounts, these distinctions reflect the relevant differences in the legal and regulatory framework applicable to such clearing members, and as such do not unfairly discriminate among clearing members within the meaning of Section 17A(b)(3)F of the Act.

The amendments are also consistent with the relevant requirements of Rule 17Ad-22. In particular, Rule 17Ad-22(e)(1)<sup>25</sup> requires that a registered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. The amendments are necessary to comply with the European regulations. In adopting specific alternative rules for FCM/BD Clearing Members, ICE Clear Europe has also taken account of the particular requirements applicable to such clearing members under U.S. law. As a result, in ICE Clear Europe's view, the amendments are consistent with the requirements of Rule 17Ad-22(e)(1).

Rule 17Ad-22(e)(14)<sup>26</sup> requires that a registered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to enable the segregation and portability of positions of a participant's customers and the collateral provided to the covered clearing agency with respect to those positions and effectively protect such positions and related collateral from the default or insolvency of that participant. The amendments are designed to enhance procedures for segregation and portability of positions and margin of indirect clients of customers of clearing members, in line with the requirements of MiFID II. The amendments for FCM/BD

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<sup>25</sup> 17 C.F.R. 240.17Ad-22(e)(1).

<sup>26</sup> 17 C.F.R. 240.17Ad-22(e)(14).

Clearing Members are also consistent with the requirements of U.S. law as to segregation and portability. As a result, the amendments comply with Rule 17Ad-22(e)(14).

Rule 17Ad-22(e)(10)<sup>27</sup> requires that a registered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor, and manage the risks associated with such physical deliveries. The proposed amendments add certain provisions relating to delivery of emission allowances, including Rules that address the finality of such obligations under relevant legislation. Such changes are, in ICE Clear Europe's view, consistent with the Rule.

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted to comply with European regulatory changes. Although use of the indirect clearing accounts may impose certain additional costs on clearing members, these result from the requirements imposed by MiFID II and related regulations. Moreover, the amendments would apply to all Non-FCM/BD Clearing Members in the same way, and similarly to all FCM/BD Clearing Members in the same way (taking into account the differences in legal regime between those two types of clearing members). As a result, ICE Clear Europe does not believe the amendments would adversely affect competition among clearing members, the market for

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<sup>27</sup> 17 C.F.R. 240.17Ad-22(e)(10).



clearing services generally or access to clearing in cleared products by clearing members or other market participants.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments relating to the proposed amendments have been solicited by ICE Clear Europe through a public consultation pursuant to Circular C17/129, dated 8 November 2017. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed amendments.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission or advance notice is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ICEEU-2017-014 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090.

All submissions should refer to File Number SR-ICEEU-2017-014. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The

Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, security-based swap submission or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, N.E., Washington, D.C. 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/notices/Notices.shtml?regulatoryFilings>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2017-014 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

#### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder

applicable to such organization.<sup>28</sup> Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.<sup>29</sup> Rule 17Ad-22(e)(1) requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.<sup>30</sup> For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A of the Act and Rule 17Ad-22(e) thereunder.

a. Indirect Clearing

The Commission finds that the portions of the proposed rule change that seek to implement the Indirect Clearing requirements are consistent with the provisions of Rule 17Ad-22(e)(1). The Commission understands that, pursuant to MiFID II requirements,<sup>31</sup> ICE Clear Europe must open and maintain new forms of customer accounts for their clearing members, which are to be used to hold assets and positions of indirect clients of direct customers of clearing members in standard omnibus indirect accounts and gross omnibus indirect accounts, as described above. The Commission also understands that the proposed changes to ICEEU's Rules and Clearing Procedures also make certain allowances for FCM/BD Clearing Members in light of particular requirements of U.S.

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<sup>28</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>29</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>30</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>31</sup> As defined in note 10, supra.

law, as described in detail above. In particular, the Commission notes that ICE Clear Europe has represented that notwithstanding the creation of standard omnibus indirect accounts for FCM/BD Clearing Members that will be made available as position-keeping subaccounts of the existing customer accounts, the Swap Customer Account is not currently available for use by FCM/BD Clearing Members for customer positions in CDS Contracts (including CDS Contracts that are security-based swaps).<sup>32</sup> The Commission relies on these particular representations and explanations by ICE Clear Europe. Consequently, the Commission believes that the proposed rule changes regarding Indirect Clearing facilitate ICE Clear Europe's ability to comply with regulatory requirements in the jurisdictions in which it operates, and help ensure that ICE Clear Europe's policies and procedures provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions, consistent with the requirements of Rule 17Ad-22(e)(1).<sup>33</sup>

b. Straight-Through Processing

The Commission understands that ICE Clear Europe is required under relevant provisions of MiFID II to implement certain provisions regarding straight-through processing. The Commission believes that the proposed rule changes regarding straight-through processing will better enable ICE Clear Europe to ensure that transactions are submitted, accepted, and cleared without undue delay. Therefore, the Commission finds that the proposed rule changes regarding straight-through processing promote the prompt and accurate clearance and settlement of securities transactions consistent with the

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<sup>32</sup> See supra note 16.

<sup>33</sup> 17 CFR 240.17Ad-22(e)(1).

requirements of Section 17A(b)(3)(F) of the Act.<sup>34</sup> Moreover, the Commission further finds the proposed rule changes regarding straight-through processing protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act<sup>35</sup> because the expeditious processing of transactions in cleared derivatives reduces the possibility of those transactions being disrupted by intervening events, such as a technological breakdown or a reduction in the financial condition of one of the counterparties. Furthermore, because the Commission believes that the proposed rule changes regarding straight-through process will maintain the consistency of ICE Clear Europe's CDS Procedures with relevant provisions of MiFID II, the Commission finds that such proposed changes will help ensure that ICE Clear Europe's policies and procedures provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions, consistent with Rule 17Ad-22(e)(1).<sup>36</sup>

c. Other Provisions

With respect to the proposed rule changes amending ICE Clear Europe's Rules to implement new definitions for "Emission Allowance" and "Emissions Registry", as well as certain related conforming and clarifying edits, and the proposed changes to the Clearing Procedures to rename ICE Clear Europe's "Market Maker Programs" as "Liquidity Provider Programs" and to rename the relevant position keeping accounts accordingly, the Commission believes that the proposed rule changes will better enable ICE Clear Europe to maintain consistency with the relevant provisions of MiFID II,

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<sup>34</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>35</sup> Id.

<sup>36</sup> 17 CFR 240.17Ad-22(e)(1).

thereby helping to ensure that ICE Clear Europe's policies and procedure provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. As a result, the Commission finds that such proposed rule changes are consistent with the requirements of Rule 17Ad-22(e)(1).<sup>37</sup>

In its filing, ICE Clear Europe requested that the Commission grant accelerated approval of the proposed rule change pursuant to Section 19(b)(2)(C)(iii) of the Exchange Act.<sup>38</sup> Under Section 19(b)(2)(C)(iii) of the Act,<sup>39</sup> the Commission may grant accelerated approval of a proposed rule change if the Commission finds good cause for doing so. ICE Clear Europe believes that accelerated approval is warranted because the proposed rule change is required in order to comply with the MiFID II requirements, which go into effect on January 3, 2018.

The Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act, for approving the proposed rule change on an accelerated basis, prior to the 30th day after the date of publication of notice in the Federal Register, because the proposed rule change is required as of January 3, 2018 in order to facilitate ICE Clear Europe's efforts to comply with the aforementioned MiFID II requirements. Additionally, the Commission notes that the proposed changes do not impede compliance with relevant U.S. law, including Section 17A(b)(3)(F) of the Act.

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<sup>37</sup> Id.

<sup>38</sup> 15 U.S.C. 78s(b)(2)(C)(iii).

<sup>39</sup> Id.

## V. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act<sup>40</sup> and the rules and regulations thereunder.

IT IS THEREFORE ORDERED pursuant to Section 19(b)(2) of the Act<sup>41</sup> that the proposed rule change (SR-ICEEU-2017-014) be, and hereby is, approved on an accelerated basis.<sup>42</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>43</sup>

Robert W. Errett,  
Deputy Secretary.

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<sup>40</sup> 15 U.S.C. 78q-1.

<sup>41</sup> 15 U.S.C. 78s(b)(2).

<sup>42</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>43</sup> 17 CFR 200.30-3(a)(12).

